

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 4, 2004

IN RE:)	DOCKET NO.
)	03-00391
PETITION OF BELL SOUTH)	
TELECOMMUNICATIONS, INC. FOR)	
EXEMPTION OF CERTAIN SERVICES)	

**ORDER GRANTING JOINT AGREED MOTION OF THE PARTIES TO WAIVE LIVE
HEARING AND ESTABLISH THE EVIDENTIARY RECORD BY MOTION IN LIEU
OF LIVE HEARING**

On June 16, 2003, BellSouth Telecommunications, Inc. ("BellSouth") and Citizens Telecommunications Company of Tennessee, LLC ("Citizens") filed a *Petition for Exemption of Certain Services* ("*Petition*") in this docket requesting exemption from regulation of their intraLATA toll service and primary rate ISDN service ("PRI"). This matter is before the Hearing Officer for consideration of the *Joint Agreed Motion of the Parties to Waive Live Hearing and Establish the Evidentiary Record by Motion in Lieu of Live Hearing* ("*Motion*"). With their *Motion*, the Parties state their agreement to waive a live hearing of the merits of the *Petition* regarding the PRI exemption issues, to waive the opportunity for cross-examination of the witnesses who have offered testimony in this docket, and to establish the evidentiary record in this case.

Background

AT&T Communications of the South Central States, LLC ("AT&T") filed a petition to intervene on June 27, 2003. The Southeastern Competitive Carriers Association ("SECCA") filed a petition to intervene on September 5, 2003. Time Warner Telecom of the MidSouth, LLC

("Time Warner") filed a petition to intervene on September 8, 2003. The petitions to intervene of AT&T, SECCA, and Time Warner were granted by an order entered in this docket on December 11, 2003.

On January 2, 2004 the Consumer Advocate and Protection Division ("Consumer Advocate" or "CAD") filed a petition to intervene in this docket. The Consumer Advocate's petition to intervene was granted by an order entered in this docket on January 8, 2004. On July 9, 2004 United Telephone-Southeast, Inc. ("Sprint" or "UTSE") filed a petition to intervene in this docket. Sprint's petition to intervene was granted by an order entered in this docket on August 4, 2004.

On July 30, 2004 the Hearing Officer entered the *Order Amending Procedural Schedule* ("*Scheduling Order*"). The *Scheduling Order* set two hearing dates for this docket: August 30, 2004 for the Hearing on the merits of the intraLATA exemption issues; and November 8, 2004 for the hearing on the merits of the PRI exemption issues. Pursuant to a prior agreement similar to the agreement proposed by the *Motion* presently under consideration, the Parties presented oral arguments on the intraLATA exemption issues on August 30, 2004 and waived their respective rights to present live testimony and cross-examine witnesses.

The Motion

In their *Motion* the Parties waive a live hearing in this docket, state their understanding that the date for post-hearing briefs set by the *Scheduling Order* will remain November 22, 2004. The Parties request that oral argument regarding the PRI exemption issues be set as soon as possible after the November 22, 2004 filing date. The Parties also request that deliberations regarding the PRI exemptions be scheduled separately for a date following the date for oral

arguments.¹ The Parties included with their *Motion* a list designating the evidentiary record for use in the deliberation of this matter as follows:

<u>Testimony</u>		
Date filed in Docket	Party	Document
10/04/04	UTSE	David Marshall Direct Testimony
10/04/04	AT&T	Mark Argenbright Direct Testimony ²
10/04/04	BellSouth	Kathy Blake Direct Testimony
10/04/04	CAD	Terry Buckner Direct Testimony Steve Brown Direct Testimony
10/18/04	UTSE	Brian K. Staihr Rebuttal Testimony
10/18/04	BellSouth	Kathy Blake Rebuttal Testimony
10/18/04	CAD	Terry Buckner Rebuttal Testimony Steve Brown Rebuttal Testimony
10/22/04	CAD	Terry Buckner Supplemental Testimony

<u>Discovery Requests and Responses</u>		
Date filed in Docket	Party	Document
08/02/04	BellSouth	First Set of Discovery to AT&T First Set of Discovery to Consumer Advocate First Set of Discovery to Time Warner
08/02/04	CAD	First Set of Interrogatories to BellSouth First Set of Interrogatories to Citizens First Set of Interrogatories to UTSE

¹ *Motion*, pp. 1,3 (November 2, 2004)

² AT&T filed Direct Testimony only On October 18, 2004, AT&T filed a notice that it would not be filing rebuttal testimony.

08/16/04	CAD	Response to BellSouth Interrogatories and Requests for Production of Documents
08/16/04	AT&T	Response to BellSouth Interrogatories and Requests for Production of Documents
08/18/04	UTSE	Response to CAD's First Set of Discovery
08/26/04	BellSouth	Supplemental Response to CAD's First Set of Discovery
08/30/04	BellSouth	Second Set of Interrogatories and Requests for Production to CAD
08/30/04	CAD	Second Set of Discovery to BellSouth Second Set of Discovery to UTSE
08/30/04	AT&T	First Interrogatories to BellSouth
08/31/04	AT&T	First Request for Production of Documents to BellSouth
09/08/04	CAD	Response to BellSouth's Motion to Compel Responses to its First Set of Interrogatories and Requests for Production of Documents
09/13/04 ³	UTSE	Response to CAD's Second Set of Discovery
09/13/04	CAD	Response to BellSouth's Second Set of Discovery
09/13/04	BellSouth	Responses to CAD's Second Set of Discovery
09/13/04	Citizens	Response to CAD Discovery
09/14/04	BellSouth	Responses to AT&T First Set of Discovery
09/27/04	AT&T	Supplemental Responses to BellSouth's First Interrogatories and Requests for Production of Documents
09/29/04	CAD	Supplemental Responses to BellSouth Discovery Requests
10/18/04	CAD	Supplemental Response to BellSouth Interrogatory No. 9
10/20/04	AT&T	Supplemental Responses to BellSouth Discovery

³ The *Motion* incorrectly indicated a filing date of September 10, 2004

Discussion

The Hearing Officer finds that the Parties have agreed to conduct the Hearing of the second portion of this docket in a manner similar to the manner in which the Hearing of the issues regarding intraLATA exemption was conducted. After reviewing the *Motion* and the record as a whole, and based upon the agreement of the Parties to this docket, the Hearing Officer finds the *Motion* well taken.

The Hearing Officer finds that several of BellSouth discovery requests and responses designated by the Parties to be included in the evidentiary record have not been filed in this docket. These documents are:

<u>Discovery Requests and Responses</u>		
Date filed in Docket	Party	Document
08/02/04	BellSouth	First Set of Discovery to AT&T First Set of Discovery to Consumer Advocate First Set of Discovery to Time Warner
08/26/04	BellSouth	Supplemental Response to CAD's First Set of Discovery
08/30/04	BellSouth	Second Set of Interrogatories and Requests for Production to CAD
09/13/04	BellSouth	Responses to CAD's Second Set of Discovery
09/14/04	BellSouth	Responses to AT&T First Set of Discovery

IT IS THEREFORE ORDERED THAT:

1. The *Motion* is granted.
2. The Parties' waiver of the Hearing on the merits is accepted and the Hearing presently set for Monday, November 8, 2004 is cancelled. A date for oral argument before the

voting panel assigned to this docket will be set by separate notice or order. A separate date for deliberation of the merits of this docket by the voting panel will be set by separate notice or order.

2. The documents identified by the Parties in their *Motion* as noted above are hereby incorporated into the evidentiary record of this docket. BellSouth shall file the documents identified herein as not yet filed by Tuesday, November 9, 2004.

A handwritten signature in black ink, appearing to read "Randal L. Gilliam", written over a horizontal line.

Randal L. Gilliam
as Hearing Officer